

111TH CONGRESS
1ST SESSION

H. R. 1181

To direct the Securities and Exchange Commission to establish both a process by which asset-backed instruments can be deemed eligible for NRSRO ratings and an initial list of such eligible asset-backed instruments.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2009

Mr. ACKERMAN (for himself and Mr. CASTLE) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To direct the Securities and Exchange Commission to establish both a process by which asset-backed instruments can be deemed eligible for NRSRO ratings and an initial list of such eligible asset-backed instruments.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. COMMISSION REGULATIONS RELATING TO**
4 **ASSET-BACKED SECURITIES FOR PURPOSES**
5 **OF NRSRO RATINGS.**

6 (a) NRSRO ASSET-BACKED SECURITIES.—Section
7 3(a)(62)(B)(iv) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78c(a)(62)(B)(iv)) is amended by striking “as

1 in effect on the date of enactment of this Act” and insert-
2 ing “, including NRSRO asset-backed securities approved
3 by the Commission and listed in such section”.

4 (b) REVISION OF REGULATIONS.—Not later than 180
5 days after the date of enactment of this Act, the Securities
6 and Exchange Commission shall revise the regulations in
7 section 1101(c) of part 229 of title 17, Code of Federal
8 Regulations, relating to the term “asset-backed securities”
9 for purposes of section 3(a)(62)(B)(iv) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78c(a)(62)(B)(iv)). The
11 revisions required under this subsection shall—

12 (1) define a subset of asset-back securities to be
13 referred to as “NRSRO asset-backed securities”,
14 which shall be the only asset-backed securities for
15 which a credit rating agency may register and issue
16 ratings as a nationally recognized statistical rating
17 organization and, which shall be restricted to securi-
18 ties representing interests in pools of assets whose
19 performance can be evaluated based on a docu-
20 mented history of predictable performance of similar
21 assets and which are contained in structures which
22 also have a documented history of predictable per-
23 formance; and

1 (2) include a list of the classes of securities ap-
2 proved as NRSRO asset-backed securities pursuant
3 to subsection (c).

4 Nothing in this subsection shall be construed so as to limit
5 any credit rating agency from rating asset-backed instru-
6 ments which are not designated as “NRSRO asset-backed
7 securities” so long as such credit rating agency makes it
8 explicit that such instruments are not NRSRO asset-
9 backed securities and the associated ratings are not issued
10 pursuant to its status as a nationally recognized statistical
11 rating organization.

12 (c) APPROVAL PROCESS FOR NRSRO ASSET-
13 BACKED SECURITIES CLASSES.—

14 (1) INITIAL FAST-TRACK APPROVAL.—Not later
15 than 90 days after the date of enactment of this
16 Act, the Securities and Exchange Commission shall
17 establish an initial list of classes of securities ap-
18 proved as NRSRO asset-backed securities.

19 (2) SUBSEQUENT APPROVAL.—After the ap-
20 proval of the initial list of classes of NRSRO asset-
21 backed securities under paragraph (1), the Commis-
22 sion shall approve additional classes of asset-backed
23 securities as NRSRO asset-backed securities on an
24 ongoing basis.

1 (3) PROCEDURE.—The Commission shall ap-
2 prove a securities class as NRSRO asset-backed se-
3 curities only—

4 (A) upon the application (in such form de-
5 termined by the Commission) of a nationally
6 recognized statistical rating organization con-
7 cerning a specific class of asset-backed securi-
8 ties;

9 (B) after receiving comment from Federal
10 and State regulators of institutions or entities
11 reasonably expected to seek funding from or in-
12 vest in such class of securities, including the
13 Federal Reserve System, the Office of the
14 Comptroller of the Currency, the Office of
15 Thrift Supervision, the Federal Deposit Insur-
16 ance Corporation, the Pension Benefit Guar-
17 anty Insurance Corporation, and State banking
18 insurance authorities; and

19 (C) after any other investigation and due
20 diligence the Commission determines to be nec-
21 essary to evaluate the proposed NRSRO asset-
22 backed securities class's compliance with the
23 standards described in paragraph (4) prior to
24 granting their approval.

1 (4) STANDARDS FOR APPROVAL OF NRSRO
2 ASSET-BACKED SECURITIES.—Approval of a class of
3 securities as an NRSRO asset-backed securities
4 class shall be limited to those securities whose future
5 performance meets the standard of “reasonably pre-
6 dictable”. At a minimum, a determination of a rea-
7 sonably predictable performance standard shall re-
8 quire—

9 (A) a sufficient history of performance
10 data, from a diverse base of sponsors spanning
11 at least 1 complete economic cycle for both the
12 collateral assets or reference assets and the
13 structure so as to generate reasonably accurate
14 statistical estimates of future performance;

15 (B) the ability to aggregate pools of the
16 collateral assets or reference assets of sufficient
17 size to generate reasonably accurate statistical
18 estimates;

19 (C) the existence of contracts for such col-
20 lateral asset product which are sufficiently
21 standardized to generate reasonably accurate
22 statistical estimates; and

23 (D) sufficient standardization of service
24 quality and procedures for such collateral asset

1 product to generate reasonably accurate statis-
2 tical estimates.

3 Securities that fail to meet 1 or more of conditions
4 set forth in subparagraphs (A) through (D) shall not
5 qualify for eligibility as NRSRO asset-backed securi-
6 ties or ratings.

7 **SEC. 2. QUALIFICATIONS FOR REGISTRATION.**

8 Section 15E of the Securities Exchange Act (15
9 U.S.C. 78o-7) is amended—

10 (1) in subsection (c), by redesignating para-
11 graph (2) as paragraph (3) and inserting after para-
12 graph (1) the following:

13 “(2) REVIEW OF RATINGS AND COOPERATION
14 WITH COMMISSION.—In order to maintain its reg-
15 istration and the integrity of the NRSRO ratings
16 system, a nationally recognized statistical rating or-
17 ganization shall annually review all ratings issued
18 and outstanding in obligor categories for which it
19 has registered, with such review to result in a formal
20 re-rating affirmation, upgrade, downgrade, or rat-
21 ings removal. Each nationally recognized statistical
22 rating organization shall provide the Commission
23 with full access to models, documentation, assump-
24 tions, and performance data upon request, shall an-
25 swer all questions and queries posed by Commission

1 on a timely basis, and otherwise cooperate with any
2 Commission investigation.”;

3 (2) in subsection (d), by striking “The Commis-
4 sion” and inserting

5 “(1) IN GENERAL.—The Commission”;

6 (3) by redesignating paragraphs (1) through
7 (5) as subparagraphs (A) through (E), respectively;
8 and

9 (4) by adding a new subparagraph (F) as fol-
10 lows:

11 “(F) has, in the course of an investigation
12 into the integrity of its NRSRO ratings caused
13 the Commission to believe that a suspension or
14 revocation of its NRSRO registration is in the
15 public interest.”.

16 (5) by adding at the end the following:

17 “(2) DETERMINATION AND EXAMINATION BY
18 COMMISSION.—In assessing whether a nationally rec-
19 ognized statistical rating organization is consistently
20 producing credit ratings with integrity for purposes
21 of paragraph (5), the Commission shall determine
22 whether ratings are issued with the expectation of
23 meeting aggregate historical loss and default stand-
24 ards for given ratings levels across all categories for
25 which a credit rating agency has registered under

1 this section. In the case of a nationally recognized
2 statistical rating organization which has registered
3 for a category or categories for which its ratings ex-
4 perience covers less than a full economic cycle, the
5 standards shall be consistent with industry norms
6 for such category or categories. Additionally, as part
7 of the ongoing qualification of NRSROs, adherence
8 to the foregoing provisions shall be evaluated
9 through the Commission's regular surveillance of
10 NRSRO models, systems, assumptions, and perform-
11 ance.”.

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